

STATUS REPORT ON HSCA APPROVAL
OF AGENCY RECORDS DESTRUCTION

1. Our 12 March 1978 letter to the HSCA informed Chairman Stokes of our plans to resume normal destruction of Agency records on 1 May 1978. This letter updated our commitment of 9 December 1976 to refrain from destroying any records until the HSCA had reviewed our records control schedules and had no objection. In the letter we stated that we would arrange at the end of March 1978 for delivery of our schedules and for a briefing of the Committee staff. In a letter dated 13 April 1978, Chairman Stokes stated that the Committee's investigation had not progressed to the point where it would be appropriate to approve the resumption of normal document destruction. He suggested that Professor Blakey, the Committee's Chief Counsel and Staff Director, sit with Agency representatives to work out a reasonable time frame.

2. Accordingly, on 19 April 1978, Professor Blakey met with the Assistant for Information, DDA, and representatives from the Records Administration Branch, ISAS, and the Offices of Legislative Counsel and General Counsel. Topics of discussion included the Agency's legal obligations, the problems of coping with our ever increasing holdings of disposable records, the impact on the Agency of responding to FOIA and PA requests related to disposable records including "questionable" file collections, the makeup of our records control schedules, and the Archivist's role in assuring

compliance with approved schedules. Professor Blakey demonstrated a considerate attitude towards our position and indicated that he would explore various possibilities with his superiors and possibly with the Archivist and Mr. Tagge, the NARS appraiser of Agency records. We have since learned informally that a member of the Committee staff has been in touch with Mr. Tagge.

3. This exchange of letters and meeting with Professor Blakey essentially mean that the moratorium on destruction of Agency records, originally imposed at the request of the Senate leadership in January 1975, continues despite SSCI Chairman Inouye's December 1977 lifting of the moratorium as far as the Senate is concerned. HSCA approval, if received today, would remove the last impediment to our destruction of disposable records. However, although Professor Blakey may see his way clear to approving the destruction of selected records, it seems quite possible that we will be unable to destroy any records until the Committee winds down in December 1978--especially since the Committee evidently is concerned primarily with how it would look if the media reported that we were destroying records in the midst of the Assassinations investigation.

4. Until we receive clearance to destroy records, we are faced with a threefold problem. First, our possession of any records approved for disposal by the Archivist is in violation of the Federal records statutes and regulations specifying that approved agency records control schedules are mandatory. Our situation with respect to this requirement may depend on the Committee's discussions with the Archivist. Second, our continued

possession of certain of our records, in particular our files on Americans, is in violation of the Privacy Act and Executive Order 12036. With respect to the Privacy Act we are subject to criminal sanctions for any failure to publish in the Federal Register, where required, our systems of records on individuals, and to civil penalties wherever an individual can demonstrate to the Courts that our maintenance of records has an adverse effect on the individual. With respect to the Executive Order, we are subject to administrative sanctions for noncompliance. Third, maintaining these records requires that we continue to search them in response to FOIA and PA requests, and furthermore, publishing them in the Federal Register may encourage further litigation under the two Acts. And of course there is always the possibility that other Congressional Committees will try to get in on the act before we are released by the HSCA.

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